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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,507	10/24/2003	Timothy S. Simpson	022082.0003US	9287
34284	7590	11/19/2007		
Rutan & Tucker, LLP. Hani Z. Sayed 611 ANTON BLVD SUITE 1400 COSTA MESA, CA 92626			EXAMINER SINGH, SUNIL	
			ART UNIT 3672	PAPER NUMBER
			MAIL DATE 11/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/692,507		SIMPSON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Sunil Singh		3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 3, 14 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 3, 14 call for the "baffle" to be sized or configured in order for the discharge flow rate to remain substantially independent of the water depth. Claim 15 calls for the riser to having openings sized or positioned such that the discharge flow rate remains substantially independent of the water depth. The specification clearly fails to enable one skilled in the art to make and/or use the invention as claimed. How is the flow rate independent of water depth? This is contrary to fluid mechanics. For example,  $Q = AV$ , wherein  $Q$  is the flow rate,  $A$  is the area of opening and  $V$  is the velocity. The velocity is directly related to  $h$  or water depth. Therefore, one skilled in the art cannot make and/or use the invention as claimed. See pages 127-129 of Fundamentals of Fluid Mechanics.

### ***Claim Rejections - 35 USC § 101***

3. The disclosed invention is inoperative and therefore lacks utility. Claims 3, 14 call for the "baffle" to be sized or configured in order for the discharge flow rate to remain

Art Unit: 3673

substantially independent of the water depth. Claim 15 calls for the riser to having openings sized or positioned such that the discharge flow rate remains substantially independent of the water depth. The disclosure clearly fails to enable one skilled in the art to make and/or use the invention as claimed. How can the flow rate independent of water depth? This is contrary to fluid mechanics. For example,  $Q = AV$ , wherein  $Q$  is the flow rate,  $A$  is the area of opening and  $V$  is the velocity. The velocity is directly related to  $h$  or water depth. Therefore, one skilled in the art cannot make and/or use the invention as claimed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Finley et al. (US 6313545).

Finley et al. discloses a flow limiting inlet structure (see Fig. 14) comprising a discharge riser (this is considered member (20) which discharges fluid) surrounded by a tiered set of nested baffles (40) wherein an inlet area of the set increases as fluid depth increases.

6. Claims 3-5, 7-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finley et al. '545 (Fig. 14) in view of Finley et al. '545 (Fig. 9).

Art Unit: 3673

Finley et al. (Fig. 14) discloses a flow limiting inlet structure (see Fig. 14) comprising a tiered set of one or more baffles (40) coupled to an outlet (this is considered as the horizontal portion of member 20 in addition to a little of the vertical portion of member 20 within member 40 as depicted in Figure 14), a discharge riser (this is considered as the rest of the vertical portion of member (20) within member 40 as depicted in Fig. 14).

However, Finley et al. (Fig. 14) is silent about the riser (this is considered as the rest of the vertical portion of member (20) within member 40 as depicted in Fig. 14) including a plurality of openings. Finley et al. (Fig. 9 ) teaches a riser having a plurality of openings (this is considered as the vertical portion of member (20) depicted in Fig. 9 having a plurality of openings (110)). It would have been considered obvious to one of ordinary skill in the art to modify Finley et al. (Fig. 14) to include the riser with a plurality of openings as taught by Finley et al. (Fig. 9) since this would be a design choice to use a power generator as taught by Figure 9.

### ***Response to Arguments***

7. Applicant's arguments filed 8/2/07 have been fully considered but they are not persuasive. Applicant argues that one skilled in the art would know how to keep the "discharge rate" independent of the water depth. The examiner disagrees. Claims 3, 14 call for the "baffle" to be sized or configured in order for the discharge flow rate to remain substantially independent of the water depth. Claim 15 calls for the riser to having openings sized or positioned such that the discharge flow rate remains substantially independent of the water depth. The disclosure clearly fails to enable one skilled in the art to make and/or use the invention as claimed. How can the flow rate be

Art Unit: 3673

independent of water depth? This is contrary to fluid mechanics. For example,  $Q = AV$ , wherein  $Q$  is the flow rate,  $A$  is the area of opening and  $V$  is the velocity. The velocity is directly related to  $h$  or water depth. Therefore, one skilled in the art cannot make and/or use the invention as claimed.

Upon further consideration of the Finley '545 reference, the examiner notes that Figure 14 and/or Figure 14 as modified by Figure 9, have the same structure as applicant's nested baffle set having a riser and outlet therein. At least this would be the case as water flows out a discharge riser (this is considered as a portion of the vertical member (20) within member 40 as depicted in Fig. 14) to the outlet (this is considered as the horizontal portion of member 20 in addition to a little of the vertical portion of member 20 within member 40 as depicted in Figure 14). It should be noted that the claims are not directed to method of using. Applicant fails to point out the structural differences between the claimed subject matter and that what is taught by Finley '545. In response to applicant's argument that Finley does not teach a device that directs water out of a basin but instead teaches introduction of water into a down tube, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Art Unit: 3673

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571 272 6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sunil Singh  
Primary Examiner  
Art Unit 3673



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10/22/07